Supreme Court, U. S.
FILED
JUL 11 1974
MICHAEL RODAK, JR., CLERK

APPENDIX

IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

NO. 73-1121

NORTH GEORGIA FINISHING, INC., *Petitioner*

V.

DI-CHEM, INC., *Respondent*

On Writ of Certiorari to the United States Supreme Court

Petition for Certiorari Filed January 17, 1974

Certiorari Granted May 28, 1974

THE SUPREME COURT OF THE UNITED STATES,
WASHINGTON, D. C.

INDEX OF SINGLE APPENDIX

1. Affidavit and Bond for Garnishment Dated August 20, 1971; Filed August 20, 1971 ..Page 3

2. Summons of Garnishment dated August 20, 1971 .....Page 6

3. Return of Service entered August 20, 1971 .....Page 8

4. Bond of North Georgia Finishing, Inc., and Security Dated August 23, 1971; Filed August 23, 1971 .....Page 9

5. Judgment Dissolving Garnishment, Dated August 23, 1971; Filed August 23, 1971 .....Page 10

6. Motion to Dismiss Writ of Garnishment with Notice thereon, Filed September 15, 1971 .....Page 11

7. Order on Motion to Dismiss Writ of Garnishment, Entered November 29, 1971 .....Page 13

8. Order on Motion of Defendent to Dismiss Writ of Garnishment (Certificate of Trial Court for Immediate Review), Entered December 3, 1971; Filed December 3, 1971 .....Page 14

9. Motion to Include Supplemental Record on Appeal, Filed March 24, 1972 .....Page 16

10. Supplemental Record on Appeal with Certificate of Court and Consent of Counsel ....Page 18

11. Order of Trial Court on Supplemental Record, Entered March 28, 1972; Filed March 29, 1972 ..Page 20

12. Certificate of Clerk of Court on Supplemental Record Entered March 30, 1972 .....Page 22

13. Order of Transfer from Supreme Court of Georgia to the Court of Appeals of Georgia, Appendix F to printed Petition for Certiorari, p. 36 (February 1, 1972) .....Page 23

14. Opinion of the Court of Appeals of Georgia, Appendix E to printed Petition for Certiorari, p. 31 (October 26, 1972) .....Page 23

15. Writ of Certiorari to the Georgia Court of Appeals from the Supreme Court of Georgia, Appendix D to printed Petition for Certiorari, p. 26 (May 24, 1973) .....Page 23

16. Order of Transfer from Court of Appeals of Georgia to the Supreme Court of Georgia, Appendix C to printed Petition for Certiorari, p. 25 (July 9, 1973) .....Page 23

17. Decision of the Supreme Court of Georgia, Appendix B to printed Petition for Certiorari, p. 13 (October 4, 1973) .....Page 23

18. Order of Supreme Court of Georgia Denying Motion for Rehearing, Appendix A to printed Petition for Certiorari, p. 12 (October 25, 1973) .....Page 23

1. *Affidavit and Bond for Garnishment*

NO. 6827

SUPERIOR COURT OF

WHITFIELD COUNTY

AFFIDAVIT AND BOND FOR GARNISHMENT

DI-CHEM, INC., Plaintiff

V.

NORTH GEORGIA FINISHING, INC., Defendant

FIRST NATIONAL BANK OF DALTON, Garnishee

Filed in Office, this 8/20/71

DUAL BROADRICK, Clerk

H. E. KINNEY, Plaintiff's Attorney

SUPERIOR COURT OF *Whitfield* COUNTY

GEORGIA, *Whitfield* COUNTY.

Personally appeared *R. L. Foster, President of Di-Chem, Inc.*, who on oath says that he is *President of Di-Chem, Inc.*, plaintiff herein and that *North Georgia Finishing, Inc.* de-

fendant, is indebted to said plaintiff in the sum of $51,279.17 DOLLARS, principal, $_____, interest, $_____ attorney's fees, and $_____ cost and that said plaintiff has—a suit pending—*returnable to the* Superior Court of *Whitfield* County, and that affiant has reason to apprehend the loss of said sum or some part thereof unless process of Garnishment issues.

Sworn to and subscribed before me,
this *August* 20, 1971

/s/ R. L. Foster, Affiant.

/s/ Dual Broadrick, Clerk
Superior Court of *Whitfield* County.

* (Italics indicate typewritten or manuscript, all other material printed form.)

GEORGIA, *Whitfield* COUNTY.

The plaintiff named in the foregoing affidavit, as principal, and the undersigned as security, jointly and severally are bound unto the defendant named in the foregoing affidavit in the sum at least equal to double the amount sworn to be due in said affidavit, subject to the following conditions:

The said Plaintiff as principal has sued out process of Garnishment upon—suit pending—in the Superior Court of *Whitfield* County against said defendant as alleged in the foregoing affidavit.

Now, should the said Plaintiff pay to the said Defendant all costs and damages that may be sustained by the said Defendant in consequence of suing said Garnishment in the event that Plaintiff fail to recover in said suit or in the event the amount sworn to be due on said judgment is not due, and in the event that the property or money sought to be garnished is not subject to garnishment process, then this Bond to be void.

Witness our hand and seal this 19 day of *August,* 1971.

DI-CHEM, INC.

BY: */s/ R. L. Foster, Pres.* (SEAL)
/s/ R. L. Foster, Security (SEAL)

Approved:

/s/ Dual Broadrick, Clerk

/s/ Smith Foster, Security
/s/ Bennie Albertson, Security

* (Italics indicate typewritten or manuscript, all other material printed form.)

2. *Summons of Garnishment*

SUPERIOR COURT OF WHITFIELD COUNTY

(Title omitted in printing)

GEORGIA, *Whitfield* COUNTY. NO. 6827

TO: *The First National Bank of Dalton*, Garnishee
Hamilton Street
Dalton, Georgia
Address

YOU ARE HEREBY REQUIRED to appear at the Superior Court of *Whitfield* County, No sooner Than Thirty (30) days, and No Later Than Forty-Five (45) Days After Date of Service, and in writing make your Answer of Garnishment, in which you state what property, money or effects you had in your hands at the date of service of this Summons, belonging to the defendant in the case of

Di-Chem, Inc.

versus

North Georgia Finishing, Inc.

AND also state what property, money or effects of the said Defendant have come into your hands between the time of the service of this Summons, and the time of making your Answer; and what you owed the Defendant at the date of the service of this Summons, and what amount you have

become indebted to the Defendant since the service of this summons.

Witness the Honorable *Robert L. Vining, Jr.*, Judge of said Court.

This *August* 20, 1971.

/s/ Dual Broadrick
Clerk, Superior Court of *Whitfield* County

* (Italics indicate typewritten or manuscript, all other material printed form.)

3. *Return of Service*

SUPERIOR COURT OF WHITFIELD COUNTY

(Title omitted in printing)

GEORGIA, *Whitfield* COUNTY.

I have this day served summons of garnishment issued upon within affidavit and bond on *The First National Bank of Dalton* by serving the same on *Mr. Allgood* its *agent* and personally in charge of the office and place of business at the time of service of said garnishee in *Dalton, Ga.*, said County, at _____ o'clock, __M.

This the 20*th* day of *August*, 1971.

/s/ G. L. Schneider, D.M.
Superior Court of *Whitfield* County.

* (Italics indicate typewritten or manuscript, all other material printed form.)

4. *Bond and Security of North Georgia Finishing, Inc.*

SUPERIOR COURT OF WHITFIELD COUNTY

(Title omitted in printing.)

Know all men by these presents, that NORTH GEORGIA FINISHING, INC., principal, and the undersigned security, are bound unto DI-CHEM, INC., plaintiff, in a sum of dollars equivalent to whatever final judgment the plaintiff may obtain against the defendant, if any, but not to exceed the sum of $51,279.17.

The condition of this obligation is such that if said principal shall pay the judgment rendered on said garnishment proceedings in said matter, then this bond to be void; otherwise of full force and effect.

Witness the hands and seals of the undersigned, this 23rd day of August, 1971.

NORTH GEORGIA FINISHING, INC.
Principal
By: */s/ Daniel Mathews, V.P.*

BEAVER CREEK INDUSTRIES, INC.
Security
By: */s/ Daniel Mathews, V.P.*
/s/ Daniel Mathews

FILED IN OFFICE
WHITFIELD SUP. CRT.
AUG. 23, 1971
/s/ Dual Broadrick
Dual Broadrick, C.S.C.

5. *Judgment Dissolving Garnishment*

IN THE SUPERIOR COURT FOR THE COUNTY OF WHITFIELD, STATE OF GEORGIA

CIVIL ACTION, FILE NO. 6827

DI-CHEM, INC., :
Plaintiff :

Vs. :

NORTH GEORGIA FINISHING, INC., :
Defendant :

JUDGMENT DISCHARGING GARNISHEE ON GIVING DISSOLUTION BOND

It appearing to the Court that the defendant in the within case has filed a proper dissolution bond dissolving the within garnishment, it is thereupon considered, ordered and adjudged that said garnishee, the First National Bank of Dalton, Dalton, Georgia, be hence discharged.

THIS 23rd day of August, 1971.

/s/ Robert L. Vining, Jr.
J. S. C. C. C.

FILED IN OFFICE
WHITFIELD SUP. CRT.
AUG. 23, 1971
/s/ Dual Broadrick
Dual Broadrick, C.S.C.

6. *Motion to Dismiss Writ of Garnishment with Notice thereon*

SUPERIOR COURT OF WHITFIELD COUNTY

(Title omitted in printing.)

Comes now the defendant, NORTH GEORGIA FINISHING, INC., and moves the Court to dismiss said writ of garnishment on the following grounds and for each of the following reasons:

-1-

Said garnishment was issued under the authority of Georgia Code Annotated § 46-101, a code section which has been expressly held unconstitutional as violative of due process.

-2-

Said procedure is unconstitutional in that it is violative of the defendant's due process and equal protection rights guaranteed him by the Constitution of the United States and the Constitution of the State of Georgia.

-3-

Said plaintiff in garnishment had no reason to apprehend the loss of any part of any judgment that he might obtain against the defendant in garnishment and therefore, had no grounds upon which to base said writ or garnishment.

-4-

Said pending suit upon which said writ of garnishment was based fails to state a claim against the defendant upon

which relief can be granted.

WHEREFORE, defendant prays that this Motion to Dismiss be sustained and that plaintiff's writ of garnishment be dismissed and that the defendant's bond dissolving said garnishment also be dissolved.

MITCHELL & MITCHELL

BY: */s/ Samuel J. Brantley*
Samuel J. Brantley

ATTORNEYS FOR DEFENDANT

P. O. ADDRESS:

P. O. Box 668
Dalton, Georgia 30720
278-2040

(Notice omitted in printing)

FILED IN OFFICE
WHITFIELD SUP. CRT.
SEPT. 15, 1971
/s/ Dual Broadrick
Dual Broadrick, C.S.C.

7. Order on Motion to Dismiss Writ of Garnishment

IN THE SUPERIOR COURT FOR THE COUNTY OF WHITFIELD, STATE OF GEORGIA

CIVIL ACTION, FILE NO. 6827

DI-CHEM, INC.,	:
Plaintiff	:
Vs.	:
NORTH GEORGIA FINISHING, INC.,	:
Defendant	:
FIRST NATIONAL BANK OF DALTON,	:
Garnishee	:

ORDER

The above motion to dismiss is hereby overruled. This 29th day of November, 1971.

/s/ Robert L. Vining, Jr.
J. S. C. C. C.

8. *Order of the Court on the Motion of the Defendant to Dismiss Writ of Garnishment (Certificate of Trial Court for Immediate Review)*

IN THE SUPERIOR COURT FOR THE COUNTY OF WHITFIELD, STATE OF GEORGIA

CIVIL ACTION, FILE NO. 6827

DI-CHEM, INC., :
Plaintiff :

Vs. :

NORTH GEORGIA FINISHING, INC., :
Defendant :

ORDER OF THE COURT ON THE MOTION OF THE DEFENDANT TO DISMISS WRIT OF GARNISHMENT

This motion having come on for hearing on the 29th day of November, 1971, in the Superior Court of Whitfield County at Dalton, Georgia, it is, after argument of counsel thereon,

ORDERED, ADJUDGED AND DECREED by the Court that said Motion to Dismiss be and the same is hereby overruled on each and every ground therein.

In accordance with the provisions of Georgia Code Annotated, Section 6-701 (Supp.), the undersigned Judge of the Superior Court hearing said motion hereby certifies within ten (10) days of the entry thereof, that this order, decision and judgment overruling such motion is of such

importance to the case that an immediate re-review should be had.

THIS 3rd day of December, 1971

/s/ Robert L. Vining, Jr.
J. S. C. C. C.

(Certificate omitted in printing.)

FILED IN OFFICE
WHITFIELD SUP. CRT.
DEC. 3, 1971
/s/ Dual Broadrick
Dual Broadrick, C.S.C.

9. *Motion to Include Supplemental Record on Appeal*

SUPERIOR COURT OF WHITFIELD COUNTY

(Title omitted in printing.)

Comes now the defendant in the above styled case and moves the Court to approve the attached certificate and order same certified and forwarded to the Court of Appeals of Georgia as a supplemental record on appeal. In support of said motion, defendant shows the Court the following:

-1-

That there is presently pending in the Court of Appeals of Georgia, an appeal from the Court's ruling of 29 November, 1971, overruling defendant's motion to dismiss plaintiff's process of garnishment.

-2-

The question of raising for the first time on appeal that no notice was given to the defendant of the garnishment proceedings has been raised by plaintiff-appellee in the appeal proceedings. The attached certification is necessary to the Court of Appeals in deciding questions raised on the appeal.

-3-

The certificate supplements the records as to matters which were omitted because the hearing of said matter in this Court was not recorded and transcribed.

-4-

The certificate reflects matters which actually took place at the hearing in this Court and is intended to avoid the

waste of judicial time and efficiency and shall permit the Court of Appeals of Georgia to have a more complete record for its consideration of the appeal.

MITCHELL, MITCHELL, COPPEDGE & BOYETT

BY: */s/ Samuel J. Brantley*
Samuel J. Brantley

ATTORNEYS FOR DEFENDANT

P. O. ADDRESS:

P. O. Box 668
Dalton, Georgia 30720
278-2040

(Notice omitted in printing.)

(Certificate omitted in printing.)

FILED IN OFFICE
WHITFIELD SUP. CRT.
MAR. 24, 1972
/s/ Dual Broadrick
Dual Broadrick, C.S.C.

10. *Supplemental Record on Appeal with Certificate of Court and Consent of Counsel*

COURT OF APPEALS OF GEORGIA

NO. 47070

(Title omitted in printing.)

GEORGIA, WHITFIELD COUNTY.

On the 29th day of November, 1971, there came on for hearing in the Superior Court of Whitfield County, Georgia, before the Honorable Robert L. Vining, Jr., Judge of said Court, then and there presiding, the defendant (NORTH GEORGIA FINISHING, INC.'s) Motion to Dismiss the process of garnishment in the case of DI-CHEM, INC. VS. NORTH GEORGIA FINISHING, INC., being Case No. 6827 in said Court. (R. 8-9).

The Court, at said hearing, considered the pleadings of record in said case and entertained argument of counsel. The pleadings of record raised generally the issue of constitutional due process, but did not specifically raise the due process issues of notice and hearing, however, during argument of counsel certain cases were cited as authority by counsel for both parties and the Court's attention was specifically directed to the constitutional due process issues of notice and prior hearing as the same pertain to the facts of the instant case.

Among the cases cited were:

(a) *Sniadach v. Family Finance Corporation of Bay View, et al*, 395 U.S. 337 (1969);

(b) *Reeves v. Motor Contract Company*, 324 F. Supp.

1011 (1971); and

(c) *American Olean Tile Company v. Ralph E. Zimmerman, Jr.*, 317 F. Supp. 150 (1970).

Counsel for the plaintiff-appellee made no objection concerning the issues of hearing and notice as same are raised in the above mentioned cases on the grounds that said issues had not been raised by the defendant-appellant's motion to dismiss.

After hearing argument of counsel, the Court entered an order overruling the defendant-appellant's motion to dismiss the process of garnishment on each and every ground therein and within ten days thereafter the Court certified the questions for appeal.

The instant certification is given for the purpose of supplementing the record on appeal to the Court of Appeals of Georgia.

/s/ Robert L. Vining, Jr.
J. S. C. C. C.

The above and foregoing supplemental record on appeal is hereby consented to by counsel of record for plaintiff and defendant.

PITTMAN, KINNEY, KEMP, PICKELL & AVRETT
By: */s/ H. E. Kinney*
H. E. Kinney
ATTORNEYS FOR PLAINTIFF-APPELLEE

MITCHELL, MITCHELL, COPPEDGE & BOYETT
By: */s/ Samuel J. Brantley*
Samuel J. Brantley
ATTORNEYS FOR DEFENDANT-APPELLANT

11. *Order of Trial Court on Supplemental Record*

IN THE SUPERIOR COURT FOR THE COUNTY OF WHITFIELD, STATE OF GEORGIA

CIVIL ACTION, FILE NO. 6827

DI-CHEM, INC., :
:
Plaintiff :
:
Vs. :
:
NORTH GEORGIA FINISHING, INC., :
:
Defendant :
:
FIRST NATIONAL BANK OF DALTON, :
:
Garnishee :

ORDER

The above and foregoing motion having come on for hearing on the 27th day of March, 1972, and it appearing that certain portions of the record being material and necessary to the Court of Appeals in deciding questions raised on appeal in the instant case have been omitted from the record, and counsel for plaintiff and defendant having consented to the foregoing certificate of the trial judge,

IT IS ORDERED, ADJUDGED and DECREED that the foregoing certificate of the trial judge be certified by the Clerk of the Superior Court of Whitfield County and transmitted by said Clerk to the Clerk of the Court of Appeals of Georgia for inclusion in the record of appeal in Court of

Appeals Case No. 47070 as a supplemental record on appeal.

ENTERED this 28th day of March, 1972.

/s/ Robert L. Vining, Jr.
J. S. C. C. C.

FILED IN OFFICE
WHITFIELD SUP. CRT.
MAR. 29, 1972
/s/ Dual Broadrick
Dual Broadrick, C.S.C.

12. *Certificate of Clerk of Court on Supplemental Record*

SUPERIOR COURT OF WHITFIELD COUNTY

(Title omitted in printing.)

STATE OF GEORGIA
COUNTY of WHITFIELD

I, DUAL BROADRICK, Clerk of the Superior Court of said State and County, do hereby certify that the foregoing is the Original Supplemental Record on Appeal in Court of Appeals Case No. 47070, in the case of:

NORTH GEORGIA FINISHING, INC.

Vs.

DI-CHEM, INC.

FIRST NATIONAL BANK OF DALTON, GARNISHEE

Being Case No. 6827, November Term, 1971, Whitfield Superior Court, as same is on file in this office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal, this 30 day of March, 1972.

/s/ Dual Broadrick
Dual Broadrick, Clerk
Superior Court,
Whitfield County, Georgia

13. Order of Transfer from Supreme Court of Georgia to the Court of Appeals of Georgia, Appendix F to printed Petition for Certiorari, p. 36 (February 1, 1972)

14. Opinion of the Court of Appeals of Georgia, Appendix E to printed Petition for Certiorari, p. 31 (October 26, 1972)

15. Writ of Certiorari to the Georgia Court of Appeals from the Supreme Court of Georgia, Appendix D to printed Petition for Certiorari, p. 26 (May 24, 1973)

16. Order of Transfer from Court of Appeals of Georgia to the Supreme Court of Georgia, Appendix C to printed Petition for Certiorari, p. 25 (July 9, 1973)

17. Decision of the Supreme Court of Georgia, Appendix B to printed Petition for Certiorari, p. 13 (October 4, 1973)

18. Order of Supreme Court of Georgia Denying Motion for Rehearing, Appendix A to printed Petition for Certiorari, p. 12 (October 25, 1973)